

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6402
AWARD NO. 169, (Case No. 190)**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DIVISION - IBT RAIL CONFERENCE**

vs

**UNION PACIFIC RAILROAD COMPANY (Former Missouri Pacific
Railroad Company)**

William R. Miller, Chairman & Neutral Member
T. W. Kreke, Employee Member
K. N. Novak, Carrier Member

Hearing Date: January 18, 2012

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated Rules 21 and 56 of the Agreement on November 23, 2010 when Mr. W. E. Boykins was coerced, harassed, intimidated, confused, threatened and forced to sign a waiver agreement accepting a Level 3 [five (5) day suspension] without opportunity for Union representation for violation of Rule 1.13 of the General Code of Operating Rules in connection with his alleged failure to comply with the instructions issued by the track supervisor to claim five (5) days' vacation instead of three (3) days' vacation and two (2) personal days (System File Number UP-534-JF-10/1542253).**
- 2. As a consequence of the violation referenced in Part 1 above, we request that the charges be dismissed and the Level 3 Discipline be removed and that Mr. Boykins be paid for all lost time, eight (8) hours a day beginning on November 23, 2010 through and including November 26, 2010 and again on November 29, 2010 at his respective straight time rate of pay for a total of forty (40) hours."**

FINDINGS:

Public Law Board No. 6402, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On November 23, 2010, the Claimant signed a Waiver of discipline rather than proceeding to a Hearing. In that Waiver Claimant admitted to the Carrier he was scheduled for vacation from his position as a Flagging Foreman on Gang 2302 from November 8 through 12, 2010, however, when he entered his time he reported three vacation days and two unpaid

personal business days. In that admission Claimant confirmed he was contacted by Track Supervisor Tamrah Dean, his direct Supervisor on November 17th who instructed him to change the two personal business days to vacation, as she had not approved any unpaid time off. The record further revealed that Claimant never corrected his time and admitted to such in a meeting of November 23rd with Supervisor Dean and Managers H. Landon and B. Shields.

According to the Carrier the Claimant was given the opportunity to accept the discipline or proceed to a formal Investigation, which is permissible under Rule 22 of the Agreement. It asserted the Claimant spoke with his Union Representative by telephone after which he signed the Waiver accepting the Level 3 discipline admitting his guilt.

Subsequently, on December 17, 2010, the Organization filed a claim on behalf of the Claimant wherein it alleged the Claimant was denied Union representation during the meeting and coerced, harassed and intimidated into accepting the discipline.

Claimant's undated statement asserted that during his conference of November 23, 2010, with Carrier Officers concerning his alleged failure to denote five days vacation on his time-roll for the period of November 8 through 12, 2010, he had a telephone conversation with his Union Representative advising him that the meeting time for this matter had changed at which time his representative told him he would be there in approximately 15 minutes. According to the Claimant he was told by the Carrier Officers they did not have time to wait any longer and would not wait another 15 minutes and he was told either to sign the Waiver or prepare to go to an Investigation and because of that ultimatum he signed.

Essentially the Organization argued the Carrier violated Rule 21(g) of Agreement when it did not give the Claimant a reasonable opportunity to consult with a duly authorized representative who was on his way to the meeting and instead forced him to sign the Waiver whereas the Carrier argued the Claimant admitted his guilt without coercion.

Review of the record reveals that Carrier Officers Landon and Shields both submitted written statements regarding the November 2nd meeting wherein each stated that the Claimant freely admitted he failed to follow Supervisor Dean's instructions of November 17, 2010, to correct his time-rolls. Both Officers also stated the Claimant was allowed to converse with his Union Representative via telephone about the charges and the Waiver after which he freely chose to sign the Waiver. Examination of the Waiver document indicates that Claimant checked Option A Section Five which states:

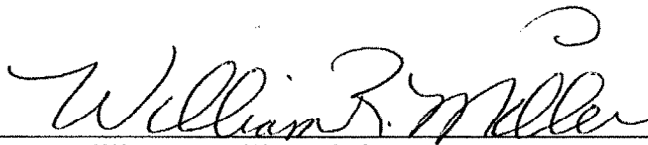
"I, the undersigned Employee, have discussed the alleged violation(s) with the responsible manager and I have been afforded a right to union representation in making my decision to accept the discipline listed above and to waive rights

to a formal investigation." (*Underlining Board's emphasis*)

The Board finds and holds that Carrier's discipline of Claimant as a result of his failure to correct his time-roll after being instructed to do so on November 17, 2010, was justified. Claimant was afforded the opportunity to have a formal Investigation, but declined and there is no proof that he was coerced into signing the Waiver as his signature attests to the fact that he consulted with his Union Representative before he voluntarily accepted the discipline admitting his guilt. The discipline with not be set aside and the claim is denied.

AWARD

Claim denied.



William R. Miller, Chairman



K. N. Novak, Carrier Member



T. W. Kreke, Employee Member

Award Date: 4-5-2012